

110TH CONGRESS
2D SESSION

S. 3465

To reserve certain proceeds from the auction of spectrum, including the auction of the D-block of spectrum, for use to provide interoperable devices to public safety personnel.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2008

Mr. WICKER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To reserve certain proceeds from the auction of spectrum, including the auction of the D-block of spectrum, for use to provide interoperable devices to public safety personnel.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reliable, Effective, and
5 Sustained Procurement of New Devices for Emergency
6 Responders Act of 2008” or the “RESPONDER Act of
7 2008”.

1 **SEC. 2. RESERVE OF CERTAIN AUCTION PROCEEDS FOR**
 2 **USE TO PROVIDE INTEROPERABLE DEVICES.**

3 Section 309(j)(8) of the Communications Act of 1934
 4 (47 U.S.C. 309(j)(8)) is amended—

5 (1) in subparagraph (A), by striking “subpara-
 6 graphs (B), (D), and (E)” and inserting “subpara-
 7 graphs (B), (D), (E), and (F)”;

8 (2) in subparagraph (C)(i), by inserting before
 9 the semicolon at the end the following: “or subpara-
 10 graph (F)”;

11 (3) by adding at the end the following:

12 “(F) TRANSFER OF CERTAIN AUCTION
 13 PROCEEDS FOR USE TO PROVIDE INTEROPER-
 14 ABLE DEVICES.—

15 “(i) ESTABLISHMENT OF TRUST
 16 FUND.—

17 “(I) IN GENERAL.—There is es-
 18 tablished in the Treasury of the
 19 United States a trust fund to be
 20 known as the ‘First Responders Inter-
 21 operable Device Availability Trust
 22 Fund’, consisting of such amounts as
 23 shall be deposited under subclause
 24 (II).

25 “(II) TRANSFER OF AMOUNTS.—
 26 Notwithstanding subparagraphs (A)

1 and (E) or any other provision of law,
 2 there shall be deposited in the First
 3 Responders Interoperable Device
 4 Availability Trust Fund—

5 “(aa) 5 percent of the net
 6 proceeds (including deposits and
 7 upfront payments from successful
 8 bidders) from the use of the com-
 9 petitive bidding system estab-
 10 lished under this subsection; and

11 “(bb) 100 percent of the net
 12 proceeds (including deposits and
 13 upfront payments from the suc-
 14 cessful bidders) from the use of a
 15 competitive bidding system under
 16 this subsection with respect to
 17 the D-block of licenses.

18 “(ii) GRANT PROGRAM.—

19 “(I) ESTABLISHMENT.—

20 “(aa) TRANSFER.—The Sec-
 21 retary of the Treasury shall
 22 transfer to the Administrator of
 23 the National Telecommunications
 24 and Information Administration
 25 amounts in the First Responders

1 Interoperable Device Availability
2 Trust Fund to be used by the
3 Administrator to make grants in
4 accordance with the requirements
5 of this clause to States and In-
6 dian tribes—

7 “(AA) to purchase
8 interoperable devices meet-
9 ing the requirements of sub-
10 clause (III); or

11 “(BB) to distribute
12 funds to local public safety
13 entities in order for such en-
14 tities to use the funds to di-
15 rectly purchase such inter-
16 operable devices.

17 “(bb) CONDITION OF
18 GRANTS.—

19 “(AA) COST SHARE.—
20 In order to obtain a grant
21 under this clause, a State or
22 Indian tribe shall agree to
23 provide for each interoper-
24 able device to be purchased
25 by the State or Indian tribe,

1 from non-Federal sources,
2 an amount equal to the dif-
3 ference (if any) between the
4 actual cost of purchasing
5 that interoperable device and
6 \$1,000.

7 “(BB) OTHER CONDI-
8 TIONS.—The Administrator
9 shall, in coordination with
10 the Director of the Office of
11 Emergency Communications
12 within the Department of
13 Homeland Security, develop
14 such additional conditions
15 and requirements that a
16 State or Indian tribe shall
17 meet in order to obtain a
18 grant under this clause as
19 the Administrator and the
20 Director determine nec-
21 essary.

22 “(cc) RESERVE FOR BREAK-
23 AGE OR LOSS.—

24 “(AA) IN GENERAL.—
25 Of the total amount of grant

1 funds made available to a
2 State or Indian tribe under
3 this clause, the State or In-
4 dian tribe shall set aside, re-
5 serve, or otherwise allocate
6 not less than 1 percent of
7 such amounts to a reserve
8 fund from which the State
9 or Indian tribe may dis-
10 tribute funds to local public
11 safety entities for repair,
12 maintenance, or loss of the
13 interoperable devices pur-
14 chased by the State or In-
15 dian tribe and distributed to
16 such agencies pursuant to
17 this subparagraph or pur-
18 chased directly by local pub-
19 lic safety entities with any
20 amounts distributed to such
21 entities under subclause
22 (VII).

23 “(BB) APPLICATION.—
24 In order to be eligible to re-
25 ceive funds for repair, main-

1 tenance, or loss as described
2 in subitem (AA), a local
3 public safety entity shall
4 submit an application at
5 such time, in such form, and
6 with such information and
7 assurances as a State or In-
8 dian tribe may require.

9 “(CC) NTIA RE-
10 VIEW.—Not later than 1
11 year after the date of enact-
12 ment of this subparagraph,
13 and each year thereafter, the
14 Administrator shall review
15 the ability of each reserve
16 fund established under
17 subitem (AA) to determine
18 if the 1-percent set aside re-
19 quirement is sufficient to
20 meet the repair, mainte-
21 nance, and loss replacement
22 needs of the State or Indian
23 tribe. If the Administrator
24 determines that the 1-per-
25 cent set aside requirement is

not sufficient, the Administrator may by rule increase the set aside requirement up to a maximum of 5 percent of the total amount of grant funds made available to a State or Indian tribe.

“(dd) RESERVE FOR ADMINISTRATIVE COSTS.—Of the total amount of grant funds made available to a State or Indian tribe under this clause, a State or Indian tribe may reserve not more than 5 percent for administrative costs associated with the management and distribution of such funds.

“(II) BULK PURCHASES.—A State or Indian tribe may use any grant funds received under subclause (I) to purchase interoperable devices meeting the requirements of subclause (III) on a bulk basis.

“(III) DEVICE REQUIREMENTS.—Interoperable devices purchased with

1 funds authorized for grants under
2 subclause (I) shall—

3 “(aa) provide both mobile
4 satellite and terrestrial based
5 wireless service;

6 “(bb) be based on an open
7 source platform;

8 “(cc) be devices intended for
9 use by public safety personnel
10 and certified for use on the inter-
11 operable network or networks
12 built to serve public safety within
13 the 700 MHz band, as agreed to
14 by the Public Safety Broadband
15 Licensee, or its successors, and
16 its commercial partners, in ac-
17 cordance with rules and regula-
18 tions promulgated by the Com-
19 mission;

20 “(dd) be compatible with
21 any other platform, spectrum, or
22 wireless network used or reserved
23 for use by the State with respect
24 to interoperable communications
25 within that State; and

1 “(ee) satisfy any other inter-
2 operable device requirements es-
3 tablished as of the date of such
4 purchase by the Secretary of
5 Homeland Security, the Adminis-
6 trator, or the Commission.

7 “(IV) COORDINATION.—In car-
8 rying out the grant program estab-
9 lished under this clause, the Adminis-
10 trator shall coordinate its efforts to
11 establish interoperable device require-
12 ments under subclause (III) with the
13 head of any other Federal agency re-
14 sponsible for establishing standards
15 related to interoperable devices.

16 “(V) ADMINISTRATIVE COSTS.—
17 Not more than 5 percent of the
18 amounts transferred to the Adminis-
19 trator in accordance with subclause
20 (I) may be used for the administrative
21 costs of the National Telecommuni-
22 cations and Information Administra-
23 tion.

24 “(VI) APPLICATION.—In order to
25 be eligible to receive a grant under

1 this clause, a State or Indian tribe
 2 shall submit an application at such
 3 time, in such form, and with such in-
 4 formation and assurances as the Ad-
 5 ministrator may require.

6 “(VII) GRANT CYCLES.—

7 “(aa) 2012.—

8 “(AA) IN GENERAL.—

9 Beginning in fiscal year
 10 2012, the Administrator
 11 shall award grants to States
 12 and Indian tribes to pur-
 13 chase interoperable devices
 14 meeting the requirements of
 15 subclause (III) or to dis-
 16 tribute funds to local public
 17 safety entities in order for
 18 such entities to use the
 19 funds to directly purchase
 20 such interoperable devices.

21 “(BB) TOTAL

22 AWARDS.—The total amount
 23 of grants awarded under
 24 subitem (AA) shall not ex-
 25 ceed \$250,000,000.

1 “(bb) 2013 AND BEYOND.—

2 “(AA) IN GENERAL.—

3 Beginning in fiscal year
4 2013 and continuing in each
5 fiscal year thereafter, the
6 Administrator shall award
7 grants to States and Indian
8 tribes to purchase interoper-
9 able devices meeting the re-
10 quirements of subclause
11 (III) or to distribute funds
12 to local public safety entities
13 in order for such entities to
14 use the funds to directly
15 purchase such interoperable
16 devices.

17 “(BB) TOTAL
18 AWARDS.—The total amount
19 of grants awarded under
20 subitem (AA) shall not ex-
21 ceed 20 percent of the total
22 amount held in the First
23 Responders Interoperable
24 Device Availability Trust
25 Fund, as such amount is de-

1 terminated on the last day of
2 the prior fiscal year.

3 “(cc) FORMULA.—Any funds
4 distributed under item (aa) or
5 item (bb) shall be based on a for-
6 mula established by the Adminis-
7 trator.

8 “(dd) BASELINE
9 AMOUNTS.—Any formula devel-
10 oped by the Administrator under
11 item (cc), shall ensure that—

12 “(AA) each State (ex-
13 cluding territories and pos-
14 sessions) shall receive, at a
15 minimum, an amount equal
16 to .50 percent of the total
17 funds made available under
18 this clause;

19 “(BB) each territory
20 shall receive, at a minimum,
21 an amount equal to .05 per-
22 cent of the total funds made
23 available under this clause;
24 and

1 “(CC) each Indian tribe
2 shall receive, at minimum, a
3 fixed amount to be deter-
4 mined by the Administrator.

5 “(ee) PRIORITY DISTRIBUTION OF REMAINING FUNDS.—
6
7 The funds remaining for distribu-
8 tion under this clause after allo-
9 cation of the baseline amounts
10 under item (dd) shall be distrib-
11 uted to State and Indian Tribes
12 based upon all-hazard risk,
13 unmet financial need, and per
14 capita income criteria established
15 by the Administrator.

16 “(VIII) DISTRIBUTION OF DE-
17 VICES OR FUNDS TO PUBLIC SAFETY
18 ENTITIES.—

19 “(aa) IN GENERAL.—Not
20 later than 180 days after receiv-
21 ing grant funds under subclause
22 (I), a State or Indian tribe shall
23 make available—

24 “(AA) the interoperable
25 devices purchased with such

1 funds to local public safety
2 entities located in that State
3 or Indian tribe; or

4 “(BB) such funds to
5 local public safety entities.

6 “(bb) APPLICATION.—

7 “(AA) IN GENERAL.—

8 In order to be eligible to re-
9 ceive an interoperable device
10 under this clause, a local
11 public safety entity shall
12 submit an application at
13 such time, in such form, and
14 with such information and
15 assurances as the State or
16 Indian tribe may require.

17 “(BB) LIMITATION ON
18 APPLICATION FOR REPLACE-
19 MENT DEVICES.—A local
20 public safety entity that re-
21 ceives an interoperable de-
22 vice under this clause may
23 submit an application for
24 additional replacement de-
25 vices once every 5 years.

1 “(cc) LIMITATIONS.—

2 “(AA) IN GENERAL.—

3 Grant funds distributed
4 from a State or Indian tribe
5 to a local public safety enti-
6 ty under this clause shall
7 not exceed \$1,000 per eligi-
8 ble public safety official
9 under the jurisdiction of
10 such entity.

11 “(BB) REQUIRED USE
12 OF FUNDS.—A local public
13 safety entity receiving grant
14 funds from a State or In-
15 dian tribe under this clause
16 shall use such funds to pur-
17 chase interoperable devices
18 that satisfy all the require-
19 ments described in subclause
20 (III) and that have been ap-
21 proved by both the State or
22 Indian tribe and the Admin-
23 istrator.

24 “(CC) PRIORITY.—A
25 State or Indian tribe that

1 receives grant funds pursu-
 2 ant to this clause shall dis-
 3 tribute such funds to local
 4 public safety entities based
 5 upon all-hazard risk, unmet
 6 financial need, and per cap-
 7 ita income criteria estab-
 8 lished by the Administrator.

9 “(iii) CREDIT.—The Administrator
 10 may borrow from the Treasury such sums
 11 as may be necessary to implement this
 12 subparagraph. The Administrator shall re-
 13 imburse the Treasury, without interest, as
 14 funds are deposited into the First Re-
 15 sponders Interoperable Device Availability
 16 Trust Fund.

17 “(iv) TRUST FUND.—

18 “(I) TRUSTEE AND REPORT.—
 19 The Secretary of the Treasury shall
 20 be the trustee of the First Responders
 21 Interoperable Device Availability
 22 Trust Fund, and shall submit an an-
 23 nual report to the Committee on Fi-
 24 nance of the Senate, the Committee
 25 on Commerce, Science, and Transpor-

1 tation of the Senate, the Committee
2 on Ways and Means of the House of
3 Representatives, and the Committee
4 on Energy and Commerce of the
5 House of Representatives on—

6 “(aa) the financial condition
7 and the results of the operations
8 of the First Responders Inter-
9 operable Device Availability
10 Trust Fund during the fiscal
11 year preceding the fiscal year in
12 which such report is submitted;

13 “(bb) the results of the in-
14 vestment activities and financial
15 status of the First Responders
16 Interoperable Device Availability
17 Trust Fund during the preceding
18 calendar year; and

19 “(cc) the expected condition
20 and operations of the First Re-
21 sponders Interoperable Device
22 Availability Trust Fund during
23 the fiscal year in which such re-
24 port is submitted and the 5 fiscal
25 years succeeding such fiscal year.

1 “(v) INVESTMENT.—

2 “(I) IN GENERAL.—The Sec-
3 retary of the Treasury shall invest
4 such portion of the First Responders
5 Interoperable Device Availability
6 Trust Fund as is not, in his or her
7 judgment, required to meet current
8 withdrawals. Such investments shall
9 be made only in interest-bearing obli-
10 gations of the United States. For such
11 purpose, such obligations may be ac-
12 quired—

13 “(aa) on original issue at
14 the issue price; or

15 “(bb) by purchase of out-
16 standing obligations at the mar-
17 ket price.

18 “(II) SALE AT MARKET
19 PRICES.—Any obligation acquired by
20 the First Responders Interoperable
21 Device Availability Trust Fund may
22 be sold by the Secretary of the Treas-
23 ury at the market price.

24 “(III) INTEREST TO BE CRED-
25 ITED TO TRUST FUND.—The interest

1 on, and the proceeds from the sale or
2 redemption of, any obligations held in
3 the First Responders Interoperable
4 Device Availability Trust Fund shall
5 be credited to and form a part of the
6 Trust Fund.

7 “(vi) STUDIES.—

8 “(I) NTIA REPORT ON GRANT
9 PROGRAM.—Not later than 1 year
10 after the date of enactment of this
11 subparagraph and each year there-
12 after, the Administrator shall conduct
13 a study and submit a report to the
14 Committee on Commerce, Science,
15 and Transportation of the Senate and
16 the Committee on Energy and Com-
17 merce of the House of Representa-
18 tives—

19 “(aa) on the distribution of
20 funds authorized for grants
21 under clause (ii); and

22 “(bb) detailing the expendi-
23 ture of such funds, including the
24 type of interoperable devices pur-
25 chased with such funds, and

whether such devices were purchased—

“(AA) by the State and distributed to local public safety entities; or

“(BB) directly by a local public safety entity.

“(II) GAO REPORT.—Not later than 3 years after the date of enactment of this subparagraph and every 3 years thereafter, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives on the—

“(aa) distribution of funds authorized for grants under clause (ii);

“(bb) expenditure of such funds;

“(cc) cost of interoperable devices to be used in connection

1 with the interoperable network or
2 networks built to serve public
3 safety within the 700 MHz band,
4 as agreed to by the Public Safety
5 Broadband Licensee, or its suc-
6 cessors, and its commercial part-
7 ners, in accordance with rules
8 and regulations promulgated by
9 the Commission;

10 “(dd) adherence of States
11 and Indian tribes to the grant
12 conditions set forth in clause
13 (ii)(I)(bb);

14 “(ee) solvency of the First
15 Responders Interoperable Device
16 Availability Trust Fund; and

17 “(ff) effectiveness and limi-
18 tations of, and potential improve-
19 ments for, the grant program es-
20 tablished under this subpara-
21 graph.

22 “(vii) DEFINITIONS.—In this subpara-
23 graph, the following definitions shall apply:

24 “(I) ADMINISTRATOR.—The term
25 ‘Administrator’ means the Adminis-

1 trator of the National Telecommuni-
2 cations and Information Administra-
3 tion.

4 “(II) D-BLOCK.—The term ‘D-
5 block’ means that part of the electro-
6 magnetic spectrum between 758
7 megahertz and 763 megahertz and
8 788 megahertz and 793 megahertz.

9 “(III) DEVICE.—The term ‘de-
10 vice’ means a portable or mobile radio
11 device.

12 “(IV) INDIAN TRIBE.—The term
13 ‘Indian tribe’ has the same meaning
14 as in section 4(e) of the Indian Self-
15 Determination and Education Assist-
16 ance Act (25 U.S.C. 450b(e)).

17 “(V) PUBLIC SAFETY ENTITY OR
18 PUBLIC SAFETY OFFICIAL.—The term
19 ‘public safety entity’ or ‘public safety
20 official’ means any entity or person
21 authorized by a State or Indian tribe
22 to protect the safety of life, health, or
23 property.

24 “(VI) STATE.—The term ‘State’
25 means each of the several States, the

1 Commonwealth of Puerto Rico, the
2 District of Columbia, and any other
3 territory or other possession of the
4 United States.

5 “(VII) TERRITORY.—The term
6 ‘territory’ means American Samoa,
7 the Republic of Palau, the Federated
8 States of Micronesia, the Marshall Is-
9 lands, the Commonwealth of the
10 Northern Mariana Islands, the United
11 States Virgin Islands, and Guam.”.

12 **SEC. 3. EXTENSION OF AUCTION AUTHORITY.**

13 Section 309(j)(11) of the Communications Act of
14 1934 (47 U.S.C. 309(j)(11)) is amended by striking
15 “2011” and inserting “2014”.

○